

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;
Michael Kubayanda, Vice Chairman;
Mark Acton;
Ann C. Fisher; and
Ashley E. Poling

Competitive Product Prices
Inbound Competitive Multi-Service Agreements with
Foreign Postal Operators
United States Postal Service
Contractual Bilateral Agreement – FY20-2 (MC2010-34)
Negotiated Service Agreement

Docket No. CP2020-167

ORDER APPROVING ADDITIONAL
INBOUND COMPETITIVE MULTI-SERVICE AGREEMENT
WITH FOREIGN POSTAL OPERATOR – FY20-2

(Issued June 22, 2020)

I. INTRODUCTION

On June 8, 2020, the Postal Service filed a notice with the Commission pursuant to 39 C.F.R. § 3035.105 and Order No. 546,¹ stating that it has entered into an Inbound

¹ Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with Foreign Postal Operator – FY20-2, June 8, 2020 (Notice). See *also* Docket Nos. MC2010-34 and CP2010-95, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 to the Competitive Product List and Approving Included Agreement, September 29, 2010 (Order No. 546).

Competitive Multi-Service Agreement with a Foreign Postal Operator (FPO). The Notice concerns the inbound portions of a competitive multi-product agreement referred to as the FPO-USPS Agreement FY20-2. Notice at 1. The Postal Service seeks to include the FPO-USPS Agreement FY20-2 within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.*

For the reasons discussed below, the Commission approves the addition of the FPO-USPS Agreement FY20-2 to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product.

II. BACKGROUND

On June 8, 2020, in accordance with 39 C.F.R. § 3035.105 and Order No. 546, the Postal Service filed its Notice, along with supporting documents. *See id.* at 4-5. The Postal Service notes that the FPO-USPS Agreement FY20-2 provides rates for inbound packets. *Id.* at 5. In the Notice, the Postal Service asserts that the FPO-USPS Agreement FY20-2 is functionally equivalent to the baseline agreement for the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product and requests that the agreement be added to the existing Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* at 3. Among the supporting documents, the Postal Service included a copy of the Governors' Decision authorizing the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product, the FPO-USPS Agreement FY20-2, a certification of compliance with 39 U.S.C. § 3633(a), and financial workpapers. *Id.* at 4-5. In addition, the Postal Service submitted an application for non-public treatment of materials requesting that unredacted portions of the FPO-USPS Agreement FY20-2, customer-identifying information, and related financial information remain under seal. *Id.* Attachment 1.

The FPO-USPS Agreement FY20-2 is intended to take effect on July 1, 2020. Notice at 1, 5; *id.* Attachment 2 at 7. It is set to expire on December 31, 2021.² Notice, Attachment 2 at 7.

On June 9, 2020, the Commission issued a notice establishing the instant docket, appointing a Public Representative, and providing interested persons with an opportunity to comment.³ On June 11, 2020, Chairman's Information Request No. 1 was issued, with questions filed under seal.⁴ On June 16, 2020, the Postal Service filed its response under seal.⁵

III. COMMENTS

The Public Representative filed comments on June 17, 2020.⁶ No other comments were received. Based upon a review of the Postal Service's Notice and supporting documentation, the Public Representative concludes that the FPO-USPS Agreement FY20-2 is functionally equivalent to the baseline agreement, and should meet the requirements of 39 U.S.C. § 3633(a). PR Comments at 2. She states the differences between the baseline agreement and the FPO-USPS Agreement FY20-2 "are not substantial." *Id.* She also affirms the supporting workpapers demonstrate the FPO-USPS Agreement FY20-2 will meet the requirements of 39 U.S.C. § 3633(a). *Id.* at 3.

² In its Notice, the Postal Service indicates the agreement expires on December 31, 2020. See Notice at 5. This is inconsistent with Article 23 of the FPO-USPS Agreement FY20-2, which indicates the agreement expires on December 31, 2021. See *id.* Attachment 2 at 7. The Commission considers Article 23 to be determinative with regard to the expiration date.

³ Notice and Order Concerning Postal Service Filing of Inbound Competitive Multi-Service Agreement with Foreign Postal Operator – FY20-2, June 9, 2020 (Order No. 5536).

⁴ Chairman's Information No. 1 and Notice of Filing Under Seal, June 11, 2020.

⁵ Response of the United States Postal Service to Chairman's Information Request No. 1, June 16, 2020.

⁶ Public Representative Comments, June 17, 2020 (PR Comments).

For these reasons, the Public Representative recommends the Commission approve the addition of the FPO-USPS Agreement FY20-2 to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.*

IV. COMMISSION ANALYSIS

The Commission's responsibilities in this case are to ensure that the FPO-USPS Agreement FY20-2 is functionally equivalent to the baseline agreement established for the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product and satisfies the requirements of 39 U.S.C. § 3633 and applicable Commission rules (39 C.F.R. §§ 3035.105 and 3035.107).

Functional equivalence. In Order No. 546, the Commission added the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product to the competitive product list and established a baseline agreement for assessing the functional equivalence of future agreements proposed for inclusion within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product.⁷

The Postal Service asserts that its filing demonstrates that the FPO-USPS Agreement FY20-2 is functionally equivalent to the baseline agreement, and requests that the agreement be included within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. Notice at 3. It asserts that the FPO-USPS Agreement FY20-2 fits within the Mail Classification Schedule language for the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* at 5. The Postal Service also asserts that the FPO-USPS Agreement FY20-2 and the baseline agreement are materially similar with respect to products and cost characteristics. *Id.* at 6. The Postal Service identifies numerous differences

⁷ See Order No. 546 at 9. The agreement was with Koninklijke TNT Post BV and TNT Post PakketSERVICE Benelux BV. *Id.* at 1-2. See also Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators (Governors' Decision No.10-3), August 6, 2010; Docket No. CP2011-69, Order Concerning an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, September 7, 2011, at 5 (Order No. 840).

between the FPO-USPS Agreement FY20-2 and the baseline agreement, but asserts that these differences do not affect the fundamental service being offered or the fundamental structure of the agreements.⁸

The Commission has reviewed the Postal Service's reasons for asserting that the FPO-USPS Agreement FY20-2 shares similar cost characteristics with the baseline agreement, and meets the pricing formula and falls within the classification established in the Governors' Decision authorizing this product. It also has considered the Public Representative's comments.

The Commission concludes that the FPO-USPS Agreement FY20-2 is functionally equivalent to the baseline agreement and that the differences between the two agreements do not fundamentally alter either the service the Postal Service will provide under the FPO-USPS Agreement FY20-2 or the structure of the FPO-USPS Agreement FY20-2. The Commission therefore finds that the FPO-USPS Agreement FY20-2 may be included within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product.

Cost considerations. The Commission reviews each competitive product to ensure that it covers its attributable costs, does not cause market dominant products to subsidize competitive products as a whole, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3035.105 and 3035.107. As long as the revenue generated by a product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, a product that covers its attributable costs is likely to comply with 39 U.S.C. § 3633(a).

The Commission has reviewed the Postal Service's filing, including supporting financial analyses provided under seal, and the Public Representative's comments.

⁸ *Id.* at 6-8. Differences include, among others, revisions to negotiated prices for various inbound letter post products; revisions to existing articles and attachments; and inclusion of new articles and attachments. *Id.*

Based on this review, the Commission finds that the FPO-USPS Agreement FY20-2 should cover its attributable costs. The addition of the FPO-USPS Agreement FY20-2 to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product should not cause cost coverage for the product to fall below 100 percent. Consequently, the Commission finds that the addition of the FPO-USPS Agreement FY20-2 to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product should allow the product to continue to comply with 39 U.S.C. § 3633(a)(2). Because it finds that the addition of the FPO-USPS Agreement FY20-2 to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product should allow the product to cover its attributable costs, the Commission concludes that the addition of the Agreement to the product should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, the Commission finds the addition of the FPO-USPS Agreement FY20-2 to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). Accordingly, a preliminary review of the FPO-USPS Agreement FY20-2 indicates it is consistent with section 3633(a). The Commission will review the cost coverage of the FPO-USPS Agreement FY20-2, the cost coverage of the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product, and the contribution of competitive products as a whole to the Postal Service's institutional costs in the Annual Compliance Determination to ensure that they continue to comply with 39 U.S.C. § 3633(a).

Other considerations. The intended effective date of the FPO-USPS Agreement FY20-2 is July 1, 2020. Notice at 1, 5; *id.* Attachment 2 at 7. The Postal Service shall promptly notify the Commission should there be a change in the effective date of the FPO-USPS Agreement FY20-2. The agreement is set to expire December 31, 2021, unless terminated earlier in accordance with Article 9 of the FPO-USPS Agreement FY20-2. Notice, Attachment 2 at 3, 7. If the agreement is terminated prior to the

scheduled expiration date, the Postal Service shall promptly file notice of such termination with the Commission in this docket.

V. ORDERING PARAGRAPHS

It is ordered:

1. The FPO-USPS Agreement FY20-2 filed in Docket No. CP2020-167 is included within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34) product. The revision to the Mail Classification Schedule appears below the signature of this Order and is effective July 1, 2020.
2. The Postal Service shall promptly notify the Commission should there be a change in the effective date of the FPO-USPS Agreement FY20-2.
3. The Postal Service shall promptly file notice of the FPO-USPS Agreement FY20-2's termination with the Commission in this docket if the FPO-USPS Agreement FY20-2 is terminated prior to the scheduled expiration date.

By the Commission.

Erica A Barker
Secretary

CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

Part B—Competitive Products **2000 Competitive Product List**

2500 Negotiated Service Agreements

2515 Inbound International

2515.10 Inbound Competitive Multi-Service Agreements with Foreign Postal Operators

2515.10.5 Products Included in Group (Agreements)

Each product is followed by a list of agreements included within that product.

- Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1

Baseline Reference

Docket Nos. MC2010-34 and CP2010-95

PRC Order No. 546, September 29, 2010

Included Agreements

FPO-USPS Agreement FY20-2, expires December 31, 2021
